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C O N F I D E N T I A L SAIGON 13189

LIMDIS

SUBJ: POSSIBLE CONSTITUTIONAL SOLUTIONS TO POTENTIAL PRESIDENTIAL CRISIS

DEPARTMENT OF STATE A/CDC/MR
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1. IN CONSIDERING THE PROBLEM THAT WOULD RESULT FROM MINH'S WITHDRAWAL FROM THE PRESIDENTIAL RACE AT LEAST TWO REMEDIES ARE CONCEIVABLY AVAILABLE IN THE CONSTITUTION, BUT BOTH WOULD REQUIRE THE ACTIVE SUPPORT OF PRESIDENT THIEU.

2. THE MOST DIRECT SOLUTION IS TO BE FOUND IN THE PROVISION THAT UNDER CERTAIN CIRCUMSTANCES THE CHAIRMAN OF THE SENATE TAKES OVER THE DUTIES OF THE PRESIDENCY AND ORGANIZES NEW PRESIDENTIAL ELECTIONS. ARTICLE 56/4 STATES THAT "IF BRACKET AFTER THE PRESIDENT HAS LEFT OFFICE END BRACKET FOR ANY REASON THE VICE PRESIDENT IS UNABLE TO ASSUME THE PRESIDENCY, THE CHAIRMAN OF THE UPPER HOUSE WILL ASSUME THE OFFICE FOR A PERIOD NOT TO EXCEED THREE MONTHS IN ORDER TO ORGANIZE THE ELECTION OF A NEW PRESIDENT AND A NEW VICE PRESIDENT FOR A NEW TERM OF OFFICE."

3. THE APPLICATION OF THIS ARTICLE WOULD REQUIRE AS A PRIOR CONDITION THAT BOTH THE PRESIDENT AND VICE PRESIDENT CEASE TO EXERCISE THEIR FUNCTIONS IN ONE OF THE CIRCUMSTANCES FORESEEN IN ARTICLE 56/1, I.E. DEATH, RESIGNATION, IMPEACHMENT, OR ILLNESS. IF PRESIDENT THIEU WERE TO BE WILLING TO RESIGN TO PAVE THE WAY FOR A CHAIRMAN OF THE SENATE TO TAKE OVER, PRESUMABLY VICE PRESIDENT KY WOULD BE WILLING TO COOPERATE IN THE HOPE THAT HE WOULD BE ABLE TO PRESENT HIS CANDIDACY



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UNDER THE NEW ELECTION LAW THAT WOULD THEN BECOME NECESSAR IMPEACHMENT SEEMS VERY UNLIKELY SINCE ACCORDING TO ARTICLES 85 THROUGH 87 IT WOULD REQUIRE A FOUR-FIFTHS VOTE OF THE SPECIAL COURT AFTER A MOTION TO BRING CHARGES APPROVED BY THREE-FOURTHS OF THE TOTAL NUMBER OF DEPUTIES AND SENATORS. ILLNESS MUST BE RECOGNIZED BY THREE-FOURTHS OF THE NATIONAL ASSEMBLY AND THIS ALSO DOES NOT SEEM A FEASIBLE ALTERNATIVE.

4. ANOTHER THEORETICALLY POSSIBLE MEANS OF SOLVING THE PROBLEM IS BY MEANS OF A CONSTITUTIONAL AMENDMENT AS PROVIDED IN ARTICLES 103 THROUGH 107, BYT THIS WOULD REQUIRE APPROVAL BY TWO-THIRDS OF THE NATIONAL ASSEMBLY. SUCH AN AMENDMENT MIGHT BE ONE WAY OF GETTING AROUND ANY LEGAL DIFFICULTIES RAISED BY ORGANIZING NEW ELECTIONS, SUCH AS OBSERVING THE CONSTITUTIONAL REQUIREMENT THAT THE PRESIDENTIAL ELECTION BE HELD FOUR WEEKS BEFORE THE TERM OF THE INCUMBENT ENDS (ARTICLE 52/4). HOWEVER, OBTAINING SUCH ACTION IN THE NATIONAL ASSEMBLY AT THIS STAGE WOULD BE EXTEMELY DIFFICULT, IF NOT IMPOSSIBLE (E.G. PREOCCUPATION WITH LOWER HOUSE ELECTIC CAMPAIGN) AND WOULD AGAIN, OF COURSE, REQUIRE WILLINGNESS BY THE EXECUTIVE TO TAKE VIGOROUS ACTION.

5. OF THESE VARIOUS POSSIBILITIES, THE SIMPLEST PROCEDURE UNDER THE CONSTITUTION WOULD BE FOR THE PRESIDENT AND VICE PRESIDENT TO RESIGN WHICH ACCORDING TO ARTICLE 56/4 WOULD AUTOMATICALLY AND WITHOUT ACTION BY THE NATIONAL ASSEMBLY OR ANY OTHER BUDY OPEN THE WAY FOR THE CHAIRMAN OF THE UPPER HOUSE TO ASSUME DIRECTION OF THE EXECUTIVE WHILE A NEW ELECTION IS ORGANIZED.
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